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76TH CONGRESS, 1st Session | SENATE | REPORT No. 532

TO PROHIBIT AND TO PREVENT THE TRADE PRACTICES KNOWN AS "COMPULSORY BLOCK-BOOKING" AND "BLIND SELLING" OF MOTION-PICTURE FILMS IN INTERSTATE AND FOREIGN COMMERCE

JUNE 1 (legislative day, MAY 31), 1939.—Ordered to be printed

Mr. NEELY, from the Committee on Interstate Commerce, submitted the following

REPORT

[To accompany S. 280]

The Committee on Interstate Commerce, to whom was referred the bill (S. 280) to prohibit and to prevent the trade practices known as "compulsory block-booking" and "blind selling" in the leasing of motion-picture films in interstate and foreign commerce, favorably report it to the Senate.

The bill is identical with S. 153, which was passed by the Senate on May 17, 1938. It is the third bill to prohibit the compulsory block-booking and blind selling of motion pictures that has been reported by this committee. The prolonged hearing on the bill is the third that this committee has held on proposed anti-block-booking legislation.[1]

GENERAL PURPOSES

The primary purpose of the bill is to establish community freedom in the selection of motion-picture films. A secondary purpose is to relieve independent interests in the motion-picture industry—producers, distributors, and exhibitors—of monopolistic and burdensome trade practices.

Compulsory block booking is the practice whereby each of the eight major producer-distributors (called the Big Eight) [2] leases to the exhibitors during each recurrent selling season its production of pic-

[1] 70th Cong., Brookhart bill, S. 1667, full hearing; 72d Cong., Brookhart bill, S. 3770, reported without further hearing or written report; 74th Cong., Neely bill, full hearings and written report (Rept. 2378); 75th Cong., Neely bill, reported without further hearings (Rept. 1377); 76th Cong., the present bill, on which exhaustive hearings were held.

[2] The so-called Big Eight are as follows: Paramount Pictures, Inc.; Loew's, Inc. (M. G. M.); RKO Radio Pictures, Inc.; Warner Bros. Pictures, Inc.; Universal Pictures Co., Inc.; Twentieth Century-Fox Film Corporation; United Artists Corporation; Columbia Pictures Corporation. United Artists, strictly speaking, is only a distributor, but is controlled by the producers whose products it distributes. Independent distributors also seek to lease as many pictures as possible at one time but due to compulsory block booking by the Big Eight the amount of playing time open to them is not great and consequently they can practice block booking only to a limited extent.

tures for the ensuing year in large blocks—often the entire output—thus affording the exhibitors no choice but to take all of the pictures so offered, or none.

Blind selling is the trade practice, of the Big Eight, whereby pictures are leased to the exhibitors usually before they have been produced and with little or no information concerning the character or quality of the pictures that will be delivered, the stories that will be embodied therein, or the treatment that will be accorded the story material in the filming thereof.[3]

The exhibitors constitute the only logical and readily available points of contact between the motion-picture industry and the various communities throughout the country. This is particularly true and especially important in the residential sections of the cities and in the rural districts. The theaters in such areas are generally operated by independent exhibitors, who cater to the family trade, including practically all of the juvenile and adolescent movie-goers, as distinguished from the big-city downtown theaters, the majority of which are owned, controlled, or operated by members of the Big Eight, and cater to more sophisticated audiences.

The representatives of religious, educational, and welfare organizations and groups, protesting against undesirable pictures exhibited in the local theaters, find that because of compulsory block booking and blind selling the exhibitor is not a free agent in the selection of films, that he must buy blindly and in blocks, and that his refusal to exhibit even the most objectionable picture included in a leased block causes him financial loss which he can seldom afford to bear.

These representatives also find that the exhibitor is helpless in the matter of obtaining many outstanding pictures not included in the blocks under contract for the reason that three or four blocks of pictures will virtually preempt his playing time and he cannot obtain the meritorious pictures of other distributors without buying their entire blocks which, in the circumstances, he cannot possibly use.

To the foregoing evil effects of compulsory block booking and blind selling should be added the injury to the independent producer whose pictures are not distributed by the Big Eight, and who finds the playing time on the screens so monopolized by his stronger rivals that he can only obtain occasional spot bookings for his output and consequently has little or no incentive to increase either the number or quality of his productions.

The extent to which the motion-picture business has already been monopolized by the Big Eight is fully set forth in the verified complaint in the case of *United States* v. *Paramount Pictures, Inc., et al.*, filed in the Federal court on July 20, 1938. This is a suit under the Sherman antitrust law which seeks mainly to compel the major producer-distributors to divest themselves of their theater holdings. The complaint summarizes the situation as follows:

(222) In securing control of the motion-picture theaters of the United States, particularly the first-run metropolitan theaters, and the larger and better chains of theaters, coupled with production facilities, the defendant producer-exhibitors herein have effectually monopolized the market for motion pictures upon a Nation-wide scale and have drawn unto themselves the power of effectually excluding from that market both independent producers and independent exhibitors.

[3] Compulsory block booking may be briefly described as "full line forcing;" blind selling as requiring the exhibitors to "buy a pig in a poke."

PUBLIC DEMAND FOR THE LEGISLATION

The pernicious effects of compulsory block booking and blind selling have had the serious attention of various national, regional, and local welfare, religious, and educational organizations for many years. Rarely if ever before has purely remedial legislation received such widespread public support. The organizations and associations which are named in the footnote were represented by spokesmen at the hearing, or submitted memoranda, letters, or telegrams in favor of the bill.[4] These vast bodies, with a combined membership of millions, have concluded that the most appropriate and effective means of coping with this situation lies in the enactment of the bill.

In addition to these great organizations the prominent leaders in educational, civic, cultural, and social work—named in the footnote—have endorsed the bill.[5]

The American Association of University Women has been active in studying local offerings of motion pictures and the policies governing their selection. The representative of this organization testified:

We believe, with many others who have studied local situations, that, if each community is given the opportunity to help choose motion pictures suitable for the entire family, the results will be increasingly beneficial both to the local community and to the motion-picture industry.

The American Home Economics Association advances two reasons why the bill should be passed—one economic, the other in behalf of the promotion of child welfare:

The economic reason for our position springs from the fact that the opportunity to choose deliberately and wisely among competing goods is a first principle of wise spending in any field. * * *

The child welfare reason for our position on block booking and blind selling springs from the fact that the practice tends to lessen personal and community influence on the character of the pictures shown in a community. This is especially noticeable in so-called neighborhood theaters, to which children easily go.

The national board of the Young Women's Christian Associations which is engaged in promoting the spiritual and cultural welfare of young people, expresses the conviction—

that compulsory block booking and blind selling are trade practices which limit the freedom of communities in their free choice of films.

[4] American Association of University Women, American Home Economics Association, American Baptist Publication Society, Associated Film Audiences, Association for Childhood Education, Board of Temperance and Social Welfare of the Disciples of Christ, Catholic Boys' Brigade of the United States, Inc., Catholic Central Verein of America, Catholic Daughters of America, Catholic Order of Foresters, Civic Club of Philadelphia, Committee on Moral and Social Welfare of the Lutheran Church in America, Council of Women for Home Missions, Editorial Council of the Religious Press, Federal Council of Churches of Christ in America, Girls' Friendly Society of United States of America, International Order of the King's Daughters and Sons, Inc., Knights of Columbus, Massachusetts Civic League, Motion Picture Research Council, National Board of Young Women's Christian Associations, National Congress of Parents and Teachers, National Council of Catholic Women, National Council of Protestant Episcopal Churches, National Education Association, National Grange, National Motion Picture League, Inc., National Sentinels, National Woman's Christian Temperance Union, National Women's Trade Union League of America, Service Star Legion, Inc., Allied States Association of Motion Picture Exhibitors and the Independent Motion Picture Producers' Association.

[5] Ada U. Comstock, Radcliffe College, Cambridge, Mass.; W. A. Neilson, Smith College, Northampton, Mass.; Mary E. Woolley, former president of Holyoke College, Holyoke, Mass.; David A. Robertson, Goucher College, Baltimore, Md.; Albert W. Palmer, the Theological Seminary, Chicago, Ill.; Bancroft Beatley, Simmons College, Boston, Mass.; John S. Nollen, Grinnell College, Grinnell, Iowa; Grady Gammage, Arizona State Teachers College; Robert C. Clothier, Rutgers College, New Brunswick, N. J.; Kenneth M. Sills, Bowdoin College, Brunswick, Maine; Rev. Samuel K. Wilson, S. J., Loyola University, Chicago, Ill.; E. H. Lindley, University of Kansas; George Thomas, University of Utah, Salt Lake City, Utah; Walter Hullihen, University of Delaware, Newark, Delaware; J. F. Zimmerman, University of New Mexico; James E. Cox, State Teachers College, Valley City, N. Dak.; Mary J. Workman, Los Angeles, Calif.; Maggie Smith Hathaway, Bureau of Child Protection, Helena, Mont.; Joseph D. Randall, Recreation Commission, San Francisco; Judge August E. Braun, Milwaukee, Wis.; Henry K. Sherrill, Diocesan House, Boston, Mass.; R. A. Cram, of Cram & Ferguson, architects, Boston, Mass.; Arthur W. Lowe, superintendent of Portland High School, Portland, Maine; William B. Mills, United States probation officer, Portland, Maine; Walter K. Ulrich, chief United States probation officer, Chicago, Ill.; Everett V. Perkins, principal of Kony High School, Augusta, Maine; David A. Durst, superintendent of schools, Petaluma, Calif.; Dr. Kenneth Wollen, of the Boston Juvenile Court; Dean Claude A. Shull, of San Francisco; Stephen P. Cabot, of Boston.

This group realizes that the bill is not a "cure all" —[6]

Nevertheless the national board, having, through its public affairs committee, given careful consideration to the subject and having studied the testimony presented at hearings, expresses to you its judgment that the present barriers to the free choice of films should be removed by legislative act.

Interest in this measure is widespread throughout our national constituency, in cities, towns, and rural communities.

The Catholic Daughters of America are eager for the exhibitors to be made free agents so that they can conform to community standards in the selection of films, and speak to the point as follows:

Since, in addition to our adult membership, the Catholic Daughters of America include 25,000 junior members, it is a matter of acute concern to our organization to guard our youth against the promiscuous display of pictures of questionable educational, patriotic, or moral value.

Therefore, this bill has been circulated throughout our entire membership, has been studied and universally approved, and its endorsement duly authorized.

The National Grange stresses the benefits to rural communities which would flow from the enactment of the bill in the following language:

In our opinion, this practice is far more destructive of the American principle of freedom of choice in the field of entertainment in rural communities than in our cities and towns.

In our urban centers there is usually more than one theater, so that if the seeker for relaxation or entertainment is unable to find that for which he is looking in one theater, he may at least have a second or a third choice.

In villages or small towns where rural folk seek entertainment, there is usually not more than one motion-picture theater, and that is operated by an independent exhibitor.

Dr. Guy Emery Shipley, editor of The Churchman, the oldest church publication in the United States, says:

Having carried on for the past 10 years a campaign for abolishing block booking and blind selling, The Churchman has had its hand pretty well on the pulse of the religious groups of the country in respect to this problem. I can say without qualification that the great majority of church people in America are behind the Neely bill * * * I would add that all leading religious journals of the United States and the Associated Church Press, of which I am secretary, which represents the Protestant religious journals of the country, are strong for the Neely bill.

THE EXTENT AND POWER OF THE MOVIES

It is estimated that the weekly movie audience consists of 88,000,000 persons. Of these approximately 32,000,000 are minors and 14 percent or 12,500,000 are 13 years of age or under.

The profound effects of motion pictures particularly on youth are recognized by both proponents and opponents of the bill and by those both within and without the industry.

In one of the Payne Fund studies, made at the request of the Motion Picture Research Council,[7] Movies, Delinquency and Crime, page 202, the authors, Messrs. Blumer and Hauser, say:

Motion pictures play an especially important part in the lives of children reared in socially disorganized areas. The influence of motion pictures seems to

[6] The bill is a compromise. Some of the public groups demanding remedial legislation favored strict Government regulation, including censorship at the studios. Others favored a bill requiring the leasing of pictures one at a time after they had been completed and had been given a trade showing. This compromise was effected in order to accomplish needed reforms with a minimum interference with the industry's practices.

[7] This is a voluntary organization of public-spirited citizens which has no connection with the motion-picture industry. Spokesmen for the producer-distributors sought to discredit the Payne Fund studies but all that was actually adduced was a small volume by Raymond Moley which showed on its face that it was compiled "at the suggestion of the motion-picture industry," which quoted a book by J. Mortimer Adler also written at the request of the industry.

be proportionate to the weakness of the family, school, church, and neighborhood. Where the institutions which have traditionally transmitted social attitudes and forms of conduct have broken down, as is usually the case in high-grade delinquency areas, motion pictures assume a greater importance as a source of ideas and schemes of life.

The committee has had access to the record of the 1936 hearings on S. 3012 (the predecessor of the present bill)[8] in which Dr. Henry James Forman, author of a summary of the Payne Fund studies entitled "Our Movie Made Children," describes the findings of those who conducted the studies as follows (pp. 96, 97):

> They found that the very youngest children, aged 8 or 9, remember of a picture about 60 percent as much as an adult would remember. Six weeks after seeing the picture those children still carried in their minds 91 percent of what they had borne away directly after seeing the picture. The visual images of the screen, reenforced by the auditory impressions of sound and speech, leave a powerful imprint upon those young minds all but indelible.

Dean Claude A. Shull of a California teachers college in a letter to the chairman of the subcommittee, states that—

> when a questionnaire was sent by Roger W. Babson to the school principals in New England asking which had the greatest influence in molding the character of our young children—the school, the church, or the home—70 percent of the principals scratched out all three and wrote in—the movies.

Herbert Blumer, associate professor of sociology at the University of Chicago, in a book entitled "Movies and Conduct," page 196, says:

> * * * motion pictures are a genuine educational institution; not educational in the restricted and conventional sense of supplying to the adolescent some detached bit of knowledge * * * but educational in the truer sense of actually introducing him to and acquainting him with a type of life which has immediate, practical, and momentous significance.

The representatives of the producers also bear witness to the power of the film. The secretary of the Motion Picture Producers and Distributors of America, Inc. (the Hays association), Carl E. Milliken, as a prelude to his testimony, said:

> What I am going to talk about has to do only with the question of the wide public interest occasioned by the fact that the motion picture does, in addition to its function as a provider of entertainment, have a good deal to do with the ideas that people get, with the attitudes that they acquire.

Cecil B. De Mille, a well-known director and producer of motion pictures, who recently spoke at Harvard, said:

> The great literature of the future is the literature of celluloid. The films may well take the place of the little red schoolbook. Motion pictures are both the greatest force for international good will and the greatest educational power in the world.

Control of this vast agency for good and evil is vested in eight great corporations. Submitted to the subcommittee was a small volume, "Film and School," by Helen Rand and Richard Lewis. This book contains two charts which show the direct control over the film industry by the leading financial groups (p. 103) and the indirect control over the industry exercised by the financiers through their sound-patents monopoly (p. 104). In both charts the towering pillars from which the converging lines emanate are labeled "Morgan" and "Rockefeller."

This textbook inquires, "Are the interests of your community represented in moving pictures you have seen?" This inquiry takes on

[8] In the 1936 hearings before the House Committee on Interstate and Foreign Commerce on H. R. 6472, p. 18, are printed the opinions of outstanding specialists on the effects of certain types of pictures on children.

added significance when we consider who actually makes the pictures, as distinguished from those who control the industry. Frank Capra, a most distinguished motion-picture director, with such pictures as Mr. Deeds Goes to Town, Lost Horizon, and You Can't Take It With You to his credit, says:

> About six producers today pass upon 90 percent of the scripts and cut and edit 90 percent of the pictures.

This potent faculty of an immense educational institution—to use Professor Blumer's characterization—which prescribes the curricula for 17,500 classrooms, was not chosen by the parents and welfare organizations of the communities in which those classrooms are located; nor is this faculty in any manner responsible to these parents or welfare organizations.

REMOTE CONTROL OF LOCAL ENVIRONMENT IS UNAMERICAN AND HAS ALREADY HAD THREE BAD EFFECTS

The advent of the movies has introduced a new major factor into the fundamentals of our American environment. Hitherto responsibility for the moral and spiritual atmosphere in which American boys and girls have matured has been determined by the home, the church, the school, the neighbors, and the books available in the community. The control of this environment, so far as it needed control, has been local. Now comes the local movie theater with its dazzling entertainment. Control of this new major factor resides in the offices of the Big Eight in New York City and in their studios in Hollywood.

There is no local power of selection of programs except in the 2,500 theaters that the Big Eight themselves operate, and then only by grace of the New York-Hollywood combine.

In the fifteen-thousand-odd theaters that are independently owned no local power of selection exists because of the block booking and blind selling trade practices which the bill is intended to prohibit. State and municipal governments can grant no relief because any interference with interstate commerce by such governments would be invalid. These trade practices are a part of the conduct of a monopoly that distributes 25,000 miles of films daily in interstate commerce. Only Federal law can restore freedom of action to the thousands of communities entangled in this far-flung financial network. The bill is one to free, not to regulate.

The departure from fundamental American methods of environment control and education which has resulted from these two trade practices has led to three unhappy results: It has undermined the morals of part of a generation of American youth; it has resulted in a loss of independence and initiative on the part of local welfare groups; it has created a highly centralized propaganda power which at any time may be thrown into gear in order to emotionalize the American people.

1. The moral effect of the cycle of objectionable pictures in the years before the forced [9] establishment of the unofficial censorship board now operating in Hollywood was serious enough to stir up an organized Nation-wide protest in the form of the Legion of Decency

[9] The force here referred to is the force of outraged public opinion.

and many other groups. A vivid illustration of this cycle is contained in the analysis of the complete story or plot outlines of 133 feature pictures made by Rev. David A. Lord, S. J., and printed in the House hearings on a companion bill, H. R. 6472, in 1936.[10]

The effect of those pictures on the generation of young people who, by the millions saw them every week for several years is embodied in their lives and in the life of the nation of which they are a vital part.

2. Another bad effect has been the loss of independence and responsibility by local welfare groups. Through the activity of the public relations department of the Hays Association hundreds of local groups have been persuaded to abandon efforts to prevent the showing of objectionable pictures and to confine their efforts to advertising the best films. "Boost the best and ignore the rest" is the slogan that was coined for them; but the pictures they are taught to ignore still have to be shown.

For a long time those groups were, and some of them still are, blind to the fact that they were working for a system which they cannot control. Their speeches, telephone calls, and circularizations stimulate attendance at exhibitions of the better pictures, but they are merely making the best of a bad situation, since they cannot exercise any real influence over the type of pictures produced or exhibited until the baneful block booking and blind selling trade practices are outlawed.[11]

3. A third unfortunate result has been the creation of a monstrous propaganda machine over which communities have no control. Col. Jason S. Joy, of Twentieth Century-Fox Film Corporation, speaking in opposition to the bill, said:

> I say to you that the moment war becomes even a possibility, so far as this country is concerned, our industry is going to be asked to change our programs, and will be asked to make a definite change almost overnight and it would not be at all possible for us, this summer, to indicate what we would have in pictures if such an emergency came about.

If such course were followed, local communities would, under existing conditions have to submit to centralized control of public opinion by means of the movies. It is by the control of such means of mass communication that the European dictatorships have been able to maintain their hold on national sentiment. That this observation is not far-fetched is indicated by a story in the Washington Post for May 3, 1939 (after the hearing had closed), to the effect that Edmund Goulding, "Hollywood's most prolific idea man," was prepared to go to New York to turn his biggest idea—an American propaganda bureau—into a reality.[12]

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[10] "Twenty-six plots or episodes were built on illicit love, i. e., love outside of marriage; 13 plots or main episodes were based on seduction accomplished; 2 had episodes based on rape; 12 plots or episodes presented seduction as attempted or planned; 1 went to the extreme of building on attempted incest; 18 characters, mostly all leading characters, lived in open adultery; 7 characters were shown planning or attempting adultery; 3 presented prostitutes as leading characters (prostitutes as incidental characters were frequent); and, in addition to these 25 presented scenes and situations and dialogs and dances of indecent or antimoral character. So we find 107 major and distinct violations of sex morality and decency in a list of 133 pictures." Other illustrations are to be found in the earlier reports of this committee in 1936 and 1938 on predecessor bills.

[11] The National Congress of Parents and Teachers and numerous other national organizations, finding that this form of cooperation with the industry was futile, adopted a policy of noncooperation with the industry until such time as legislation to abolish compulsory block booking and blind selling was enacted.

[12] Excerpts: "Goulding, who first gained fame during the World War as a propagandist and who later became one of Hollywood's highest-paid directors, said he hoped to coordinate leaders of public thought into one all-powerful committee: 'I hope we can get a leading newspaper publisher,' he said, 'a radio chieftain, a magazine owner, a ranking churchman, a movie producer, and a book publisher, all to sit on the same committee, talk over national problems, and give their opinions to the public. If such men acted collectively, they could saturate the American mass mind in a week to a point of 75 percent conviction. They could be the most valuable.' "

COMPULSORY BLOCK BOOKING AND BLIND SELLING ARE A BLIGHT ON CREATIVE EFFORT, PRODUCTION, AND EMPLOYMENT

The most convincing testimony concerning the baleful effects of compulsory block booking and blind selling comes from those within the motion-picture industry.

Carl Laemmle, a pioneer producer and until recently the head of Universal Pictures Corporation, says:

> Abolition of block booking will be a good thing for the industry. Of course, the picture producer won't like it because it means that he will be obliged to make only good pictures.
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> * * * * * * *
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> However, in the course of time, the producer will not be sorry if block booking is ruled out. He will not be obliged to make trash to compete with trash, and he can concentrate on high-grade product, make better pictures, and make more money.

Variety, a leading publication devoted to the screen and stage, carried in its issue for December 14, 1938, an editorial entitled "Block booking not showmanship." It said, among other things:

> Every sales executive in the business knows too well that under block booking the weak are carried along with the strong, and if pictures of the major companies were forced to stand on their own quality as attractions and entertainment there would be an explosion in Hollywood which would eliminate the drones and properly focus approval on the real creators.
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> * * * * * * *
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> Block booking is the Moloch which consumes good, bad, and indifferent product in its insatiable machinery. The wonder is not the scarcity of outstanding, smashing film hits, but that under the present system of industry operation there are any hits at all.

The Motion Picture Herald for December 17, 1938, carried an editorial by its publisher, Martin Quigley, an authority on motion pictures, a part of which is as follows:

> The industry's greatest asset is the reputation of the motion picture. It should be cherished and preserved. This most decidedly is not done when pictures which are known to be below acceptable standards are forced upon the screens of thousands of theaters, not by any demand that exists for them—on part of either the public or the exhibitor—but rather by a system which automatically insures their distribution.

Phil Goldstone, an independent producer of motion pictures and president of the Independent Motion Picture Producers' Association, wired that—

> Block booking has gradually killed off and almost eliminated independent production. If independent producers had a fair opportunity to market their product it would cause a complete revival of their industry and the employment of additional hundreds.

I. E. Chadwick, a distinguished producer, who is now awaiting the enactment of the bill to clear the way for him to resume activity, put it this way:

> Abolition of block booking will emancipate the independent producer, distributor, and exhibitor, encourage competition and new capital and reemploy hundreds now inactive and unemployed.

E. B. Derr, another independent producer, says:

> I believe the elimination of block booking is a good thing for the industry in general and it should surely improve the quality of independent production as it should open the screens not now available to us for our product.

In no other industry are all of the risks of the manufacturer or producer passed on to the retailer and the consumer. The Big Eight designate a certain number of pictures to be paid for on the basis of a stated percentage of the gross receipts of the theaters while showing such pictures. But these designations are not made until after the box-office value of the pictures has been determined by test runs, so that no risk is involved so far as the Big Eight are concerned.

The independent exhibitor, in order to get any films, is obliged to contract to accept and pay for all that the producer sees fit to release during the contract period—1 year.[13] He cannot cultivate the good will and suit the preferences of his patrons by selecting the pictures best calculated to please them. Subject only to minor exceptions, the rule is "all or none."

The most penetrating analysis of the conditions which result in foisting so many undesirable and mediocre pictures on the American public and the remedy therefor are set forth with great clarity in an article by Walter Lippmann taken from the New York Herald Tribune of January 12, 1935.

Effective reform depends, it seems to me, on a clear understanding of what, given the American traditions of freedom and the variety of American tastes and American moral standards, reform ought to aim at. I would rest reform of the movies on this basic principle: That audiences shall have greater freedom to choose their pictures and that artists and producers shall have greater freedom to make pictures. Within the obvious limits of the ordinary law about obscenity and provocation to crime, the best regulation would be that exercised by the customers at the box office of a theater. The best way to improve the movies would be to open the door to intense competition by independent and experimenting producers.

If the customers had freedom of choice, each community would be able to enforce the moral standards it believes in. Each exhibitor would have to take the business risk of estimating correctly the tastes of his customers, and educators, dramatic critics, moral leaders in each community would be able to exert effectively whatever influence they can command. This is the system under which theaters, books, magazines, and newspapers operate and it is not an unsatisfactory system. Anyone, who can find a little capital, can produce what he chooses. But then he has to submit his production to the test of circulation. The highbrow and the lowbrow, the libertine and the puritan, tend to find their own audiences.

PROVISIONS OF THE BILL

The bill is founded upon the American principle of home rule and, as pointed out in the testimony, it aims more at a restoration than an innovation in industry practice.[14] It first makes unlawful the compulsory block booking of motion pictures and then, to make that provision effective, it requires distributors in leasing or offering to lease pictures, to furnish the exhibitors with a synopsis of each picture.

[13] The witness Samuelson enumerated the many bad and indifferent pictures which independent exhibitors had to take last year in order to get the few really good pictures released by the Big Eight. For example, an exhibitor desiring to play You Can't Take It With You had to take the following pictures, among others, the titles of which are an indication of their type and quality: Crime Takes A Holiday, Flight to Fame, The Little Adventuress, Adventure in Sahara, Blondie, Terror of Tiny Town (with a cast of midgets), The Strange Case of Dr. Meade, There's That Woman Again, Smashing the Spy Ring, Homicide Bureau, The Lone Wolf Spy, North of Shanghai, My Son Is A Criminal, Let Us Live, Romance of the Redwoods, Blondie Meets the Boss, Whispering Enemies, The Lady and the Mob, First Offenders. Pictures of this class are rarely shown by the Big Eight in their own theaters; they are never shown in their downtown de luxe theaters.

[14] The evolution of compulsory block booking and blind selling was fully developed in the hearing held by this committee in 1936, Record, pp. 68-69; also in the hearing before the House committee the same year, Record, pp. 165-169.

Section 1 declares that compulsory block booking and blind selling are contrary to public policy in that—

such practices interfere with the informed selection of films on the part of the exhibitors and prevent the people of the several States and the local communities thereof from influencing such selection in the best interests of the public and tend to create a monopoly in the production, distribution, and exhibition of films.

Section 2 contains definitions of certain expressions—more especially those relating to the motion-picture business—used in the bill.

For those not familiar with the mechanics of sound recording it should be explained that this is accomplished by means of a "sound tract" on the margin of the film, and the sound—music, dialog, etc.—thus recorded is reproduced in the theater. "Film" thus includes everything on the film—the sound as well as the picture. Newsreels, however, and other short subjects are expressly excluded from the operation of the bill.

Section 3 (1) declares that it shall be unlawful to lease or offer to lease motion pictures under the compulsory block-booking system, or to resort to any device for attaining that end by indirection. It is fashioned after section 3 of the Clayton Act (the antitying clause provision) [15] in that it prevents compulsion by exacting a disproportionately high film rental for single pictures or groups less than a block as compared to the aggregate rental for the entire block.

Subsection 2 of section 3 provides that it shall be unlawful for any person knowingly to transport or cause to be transported in interstate commerce any film leased or intended to be leased in violation of subsection 1.

Section 4 makes it unlawful for any distributor to lease or offer to lease for public exhibition any film over 2,000 feet in length (that is, any feature picture) without at the same time furnishing to the exhibitor a "complete and true synopsis" of the contents of the film. (It is proposed to amend this section, in the light of the testimony, to make it more liberal to the producers, since it is believed that this can be accomplished without materially weakening the bill.)

Section 5 (1) provides that every person who violates section 3, or who fails to furnish the synopsis required by section 4, or who knowingly makes any false statement in such synopsis, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than a year, or by both such punishments in the discretion of the court. The penalty thus provided is the same as that which has been imposed for nearly 50 years by the Sherman antitrust law on persons who have made contracts or engaged in combinations or conspiracies in restraint of trade.

Section 5 (2) confers jurisdiction upon the district courts of the United States, on the application of the Attorney General, to institute proceedings in equity to prevent and restrain violations of the act.

Section 6 is the usual saving clause to the effect that if any part of the act shall be held unconstitutional such action shall not affect the remainder.

Section 7 provides that the act shall become effective 12 months after its passage.

[15] Upheld in *United States* v. *United Shoe Machinery Co.* (264 Fed. 138; affirmed, 258 U. S. 451).

Proposed amendment.—Witnesses representing the studios centered their attack on section 4, complaining that it would be unduly burdensome and would interfere with the production of quality pictures to be compelled to furnish in advance "a complete and true synopsis" which should include "an outline of the story, incidents and scenes depicted or to be depicted." To meet these objections the author of the bill and of this report will on the floor of the Senate move to strike out all of section 4 and insert in lieu thereof the following:

SEC. 4. It shall be unlawful for any distributor of motion-picture films in commerce to lease or offer to lease for public exhibition any motion-picture film over two thousand feet in length unless such distributor shall furnish the exhibitor at or before the time of making such lease or offer to lease an accurate synopsis of the contents of such film. Such synopsis shall be made a part of the lease and shall include (a) a general outline [16] of the story and description of the principal characters, and (b) a statement describing the manner of treatment of dialogs concerning and scenes depicting vice, crime, or suggestive of sexual passion. It is the purpose of this section to make available to the exhibitor sufficient information concerning the type and contents of the film and the manner of treatment of questionable subject matter to enable him to determine whether he wishes to select the film for exhibition and later to determine whether the film is fairly described by the synopsis.

It is believed that this amendment will meet the producers' reasonable objections to the bill. The constitutional aspects of the measure are dealt with in a memorandum by Prof. Noel T. Dowling, a lecturer on constitutional law at Columbia University and an expert connected with the legislative drafting service maintained by that institution. (See Appendix.)

ENACTMENT OF THE BILL WILL BENEFIT THE PUBLIC AND WILL NOT INJURE THE MOTION-PICTURE INDUSTRY

1. *Public benefits.*—The demands of great national organizations with thousands of local branches for restoration of freedom of choice is impressive. The local parent-teacher associations of the country number more than 27,000 with a paid membership of over 2,250,000. The State congresses of this association in 47 of the 48 States are loyally supporting the bill. The complete list of organizations urging the passage of this remedial measure appears near the beginning of this report. The extraordinary sponsorship thus indicated is a guaranty that as soon as the bill becomes effective thousands of groups throughout the country will in no uncertain terms indicate the standards to which they will hold their local exhibitors in the selection of their programs.

The normal American way in which this will take place is well expressed by Walter Lippman in the article hereinbefore set out.

Not only the organizations and associations listed, but the exhibitors and the public at large are entitled to their say as to what shall be shown on the screens. Their composite good taste is to be preferred to that of the movie producers. Dr. Fred Eastman, associate editor of the Christian Century, points out that—

The fact that every one of the 10 best-paying pictures last year was on the approved list of practically every group which appraises pictures is convincing evidence that the public supports voluntarily the better pictures. There are, of course, occasional exceptions to this, but they are only occasional.

[16] "General" is used in its primary sense of "comprising, dealing with or directed to the main elements, features, purposes, etc., with neglect of unimportant details," not in its secondary sense of "indefinite, vague."

An exhibitor states:

As an exhibitor who has been in this business for 20 years, and as a leader who has talked with scores of exhibitors and knows the operation of a local theater, I wish to state that any exhibitor who goes contrary to the will of the best people in his community might just as well close his doors. Undesirable pictures would certainly not be run in the theater where the community at all expressed its feelings in reference to them, if the exhibitor himself has the power to make the selection.

Another exhibitor says:

A small town exhibitor is naturally conversant with the tastes of his particular community. With S. 280 a law, the exhibitor will have information as to the type of pictures he is leasing at the time he negotiates the lease. With such information, he can select those pictures that will suit his particular community. * * *
Community opinion will assert itself because it will realize that the exhibitor has no alibi behind which he can hide.

2. *Will not injure the industry.*—Assertions that compulsory block booking is necessary in order to insure a market for the products of the studios are nullified by the fact that the Big Eight do not exhibit the poorer pictures in their own theaters and do not enforce block booking against one another. The verified bill of complaint in *United States* v. *Paramount et al.* alleges: [17]

Block booking is seldom, if ever, enforced by the producer-distributor-exhibitor defendants (the Big Eight) against each other. On the contrary, the exhibition contracts between and among the defendants herein are usually placed upon a selective basis, whereunder each defendant and its affiliated theaters may play such product or pictures of the other, or others, as it may select. In the case of the independent exhibitor, however, he is compelled to contract and pay for a whole block or group of pictures in order to obtain any of them which he may desire.

It was shown that in Washington, D. C., approximately 200 pictures annually released by the Big Eight are not played in their own first-run downtown theaters. Independent neighborhood and suburban theaters are, however, required to contract for, and accept those pictures.

If the producers refrain from showing their poor pictures in their own theaters, and do not force them upon one another, it is manifestly unfair to force them upon the independent exhibitors. The significant fact is, that by this discrimination, the Big Eight have withdrawn 2,500 of the largest and best situated theaters from the assured market for films and look only to the independent exhibitors to underwrite the cost of producing poor pictures, plus a profit for the producers.

The enactment of this bill cannot result in loss to the industry as a whole. The amount of playing time on the screens of the United States is fixed. It cannot be reduced by the abolishment of compulsory block booking. The sources from which pictures can be obtained are, for the present, limited. Approximately 80 percent of the feature motion-picture films are produced each year by the Big Eight or their subsidiaries or associates. These sources will continue to supply the films that will consume this fixed playing time until new competition enters the field. Therefore, loss from the curtailment of playing time for poor pictures will be more than compensated for by the increased playing time of good pictures. The market will still be there—an assured market—but the good pictures will earn more and the poor pictures will earn less.

[17] Equity suit against the Big Eight under the Sherman law, mentioned supra.

What the Big Eight fear is loss of monopolistic privileges over and above the legitimate rewards of enterprise—privileges that have been enjoyed so long that they are now regarded as vested rights.[18] These privileges have given rise to great benefits as indicated by the executive salary list printed in the record. One Hollywood executive received, in 1937, a salary that exceeded the combined salaries of the 96 United States Senators. Most of all, they fear competition. A spokesman for the independent exhibitors declared there was only one thing the distributors had to fear from the enactment of the bill:

> That is the opening of the business to the competition of independent production. With compulsory block booking abolished, the Big Eight, in common with all other industries, will have to sell their products on their merits. An independent picture which is better than a trust-made picture will supplant it on the screens.

ACTION SHOULD NOT BE DELAYED BECAUSE OF THE BIG EIGHT'S TRADE-PRACTICE PROPOSALS OR THE PENDENCY OF THE GOVERNMENT SUIT

Producers' proposals.—After having failed to make good on promises of voluntary reform undertaken while similar legislation was under consideration in 1936,[19] the Big Eight,[20] on the eve of the hearing on this bill, brought forth a proposed voluntary trade-practice code as a substitute for the bill. Objections were raised by the proponents of the bill on the grounds (*a*) that because of the manner in which the proposal was brought forth and the history of such attempts in the past, the good faith of the gesture was open to doubt; (*b*) that the committee room ought not to be made a "bargaining counter" for the adjustment between different branches of the industry of practices affecting the public; (*c*) that since the proposal really amounts to an agreement to perpetuate in modified form the practices in question, it is of doubtful legality; and (*d*) in any case, it is not a fair substitute for the bill.

The producers' proposals do not abolish compulsory block booking or blind selling, but, on the contrary, they propose to perpetuate those practices. Certain of the proposals would slightly diminish the hardships of compulsory block booking, but they would effect no change in blind selling. Relief from the effects of the objectionable practices would be slight, and such as it might be would be accomplished (1) by a limited right of cancelation, (2) by allowing the withdrawal of a picture locally offensive, (3) by allowing an exhibitor to get a popular picture under special circumstances without having to lease an entire block.

(1) The proposals insure the perpetuation of compulsory block booking because the cancelation privilege offered would not be available to an exhibitor unless he had contracted for the entire number of feature pictures [21] offered to him at any one time.

The proposal is for a 10, 15, or 20 percent cancelation privilege, depending upon the price of the whole block. Thus the right would be a limited one and could be nullified by padding the block with a quota of cheap pictures or "cheaters" upon which the exhibitor would have to exhaust his whole privilege of cancelation. There was testimony to the effect that some of the producers resorted to such tactics

[18] The bill of complaint in *United States v. Paramount et al.*, supra, mentions 9 oppressive practices which the Big Eight impose upon independent exhibitors, and 6 special benefits in the leasing of film which they extend to each other but withhold from the independent exhibitors.
[19] Hearings before House committee on H. R. 6472, pp. 366, 367, 369, 459.
[20] Except United Artists.
[21] Except cheap westerns, foreign pictures, and reissued pictures.

in order to defeat a similar cancelation privilege provided in the N. R. A. code.

Any right of cancelation after a film has been released is a poor substitute for the power of selection at the time the exhibitor leases his films, because (*a*) natural human inertia is against changing that which has once been done, (*b*) cancelation is ineffective unless the exhibitor can freely contract for additional good pictures individually or in small groups to replace the poor ones canceled, and (*c*) an exhibitor could exclude only unwanted pictures and could not fully open his screen to desired pictures and to independent productions.

Finally, the cancelation privilege could not be exercised by the exhibitor as he saw fit, except in the lowest price bracket, in which the "cheaters" would be found. It could only be exercised proportionately in the higher price brackets even though an undue proportion of undesirable pictures were allocated to those brackets.

(2) In addition to the foregoing limited cancelation privilege, the major companies would permit an exhibitor to exclude from his contract "any feature which may be locally offensive on moral, religious, or racial grounds." However, this privilege would have to be exercised within 2 weeks after the completion of the first exhibition of the picture in the "exchange territory" in which the exhibitor was located.[22] Thus local exhibitors would have to keep a check on exhibitions in theaters in their own State and frequently in surrounding States.

If the distributor did not agree that a picture was locally offensive, the question would have to be determined by an arbitration board [23] located in the film-exchange center for the territory. This makes impossible any effective action by local civic and welfare groups because (*a*) they would have no means of knowing whether a picture shown at a distant point was "locally offensive"; (*b*) assuming the local exhibitor agreed with them regarding a particular picture, they could not carry their fight to an arbitration board located possibly two or three hundred miles away; and finally (*c*), to force an open fight over a picture on the ground that it is offensive would advertise it all over the country and consequently do more harm than good.

(3) The proposal to enable an exhibitor to get an outstanding picture without contracting for more additional pictures than he can handle would be exercisable under the following circumstances: (*a*) That the picture has created a natural and spontaneous national demand, and (*b*) that there is a spontaneous and natural public demand for the picture in the place where the theater desiring to secure it is located. After the exhibitor has convinced either the distributor or an arbitration board that both of these comprehensive conditions exist, he can procure the picture together with such number of additional pictures as may be requisite to fill up all of his remaining available playing time. It is apparent, therefore, that this privilege can be exercised only once, and as against only one distributor during the yearly contract period.

The manner in which both compulsory block booking and blind selling are protected and perpetuated by the terms of these "concessions" is ample proof of the monopoly power exercised by the Big Eight. The St. Louis Post-Dispatch, April 11, 1939, commenting

[22] The United States is divided into 31 exchange territories, hence the distances included in each—especially in the West—are very great. E. g., Minneapolis is the exchange center for Minnesota, North and South Dakota, and Northern Wisconsin.

[23] At the time of the hearing no detailed plan of arbitration had been presented.

on these proposals, and recalling that anti-block-booking legislation had been pending for more than 10 years, said: "Passage of the Neely bill, not acceptance of the producers' eleventh-hour compromise offer, is the solution."

Government suit.—The complaint in this case includes compulsory block booking among the many monopolistic practices employed by the Big Eight and asks that such practices be enjoined. It makes no mention of the twin evil, blind selling. The complaint was filed more than 10 months ago and the defendants, employing dilatory tactics, have not yet answered. Moreover, the effective proscription of compulsory block booking and blind selling calls for complicated affirmative as well as negative provisions which would be more appropriate for legislation than for a decree. The primary purpose of the suit is to divorce production and distribution from theater operation.

CONCLUSION

In reporting the bill favorably, the committee is confident that it will meet in as moderate a manner as possible a need for legislation that is constantly growing more acute due (*a*) to the tremendous influence of the movies on the morals, thinking, and culture of the country (admitted by proponents and opponents of the bill alike), and (*b*) to the monopolistic control which the Big Eight now exert and are constantly increasing over all branches of the motion-picture industry.

The contention that the movies have improved in quality since the Legion of Decency campaign in 1934 is irrelevant since the public is entitled to choose even as between good pictures. But the reformation was made only in response to insistent public demand and there is no assurance that even present imperfect standards [24] will be maintained if this legislation is not passed. Experience as recounted at the hearing teaches that, as a rule, such reforms are sporadic, are always forced by outbursts of public indignation, and are usually of short duration.

APPENDIX

Memorandum in re the Constitutional Basis of the Neely Bill To Prohibit Compulsory Block Booking and Blind Selling

This memorandum is filed on behalf of the National Motion Picture Research Council. Its purpose is to show that there is a clear constitutional basis upon which a statute for the eradication of compulsory block booking and blind selling may be rested if the Congress concludes on the facts before it and an appraisal of the public needs that these practices are evils which ought to be stopped. It does not purport to be an exhaustive brief on the constitutional questions involved in the proposed legislation, nor does it attempt to analyze and weigh the evidence taken in the course of the hearings conducted by the committees of the Senate and the House. The facts and opinions gathered in those hearings, together with others which may be adduced in the courts, will have a determinative influence on the question of the validity of the law; for, as will be developed later in this memorandum, the final judgment on constitutional questions of the character involved in this legislation depends upon the determination of questions of fact and the appraisement of economic conditions.

[24] The notion that perfection has been attained is negatived by the fact that the Legion of Decency and other organizations still have to classify pictures as "suitable for adults only," "suitable for children," and "unsuitable for any type of audience." Harrison's Reports, a motion-picture trade paper, issue of May 13, 1939 (after close of the hearing), says, "Let us glance at the crime pictures that have been reviewed in Harrison's Reports since the first week in January: In the 19 weeks since the first week in January, 142 pictures have been reviewed. Of these 85, or 56 71/100, have been founded on some kind of crime theme—either murder or stealing. Of course, not all of them are demoralizing—perhaps one-third of this number are harmless; but when one takes into consideration the extraordinarily high percentage of vicious crime pictures, one wonders whether the Hollywood producers realize what the outcome may be."

I. THE CONSTITUTIONAL QUESTION: DUE PROCESS OF LAW

The substance of the proposed act is contained in its third and fourth sections. Section 3 prohibits compulsory block booking and closes the channels of interstate commerce to any films leased in violation of this prohibition. Section 4 declares it unlawful to lease any film, unless the distributor shall furnish the exhibitor "a true and complete synopsis of the contents of such film."

There is no question under the commerce clause. All parties concerned agree that the leasing of motion pictures constitutes an interstate-commerce transaction and is within the field of congressional regulation,[25] provided that the regulation offends no other provision of the Constitution. Consequently, in the present instance, Congress is free from any difficulties such as were present in the enactment of N. I. R. A.[26] or the Child Labor Act.[27]

The sole question is whether the bill, if enacted, would violate the due-process clause of the fifth amendment. "Due process" is the basis of the objections made against the bill on behalf of the Motion Picture Producers and Distributors of America, Inc., by Mr. Pettijohn, general counsel.[28] It is also the point of an objection made by Chief Counsel Kelley of the Federal Trade Commission to the synopsis requirement of section 4 and of a question suggested by him as to the validity of the prohibition against interstate shipment of films leased in violation of section 3.[29]

As against the foregoing memoranda in opposition to the validity of the bill, other memoranda have been submitted in its favor, one by Assistant Attorney General Stephens [30] and one by Mr. Burr, of the Federal Trade Commission.[31] Furthermore, the memorandum by Mr. Kelley (already referred to) holds the bill constitutional except for one section, namely, section 4.[32]

II. CONSTITUTIONAL RIGHTS ASSERTED ON BEHALF OF THE MOTION-PICTURE INDUSTRY

Two sweeping contentions have been made on behalf of the industry, and the arguments in support of those contentions will be considered at the outset. The first is that the motion-picture producers and distributors "in the absence of any purpose to create or maintain a monopoly have the right to select their own customers and dispose of their film in wholesale lots of two or more at prices which in their judgment are adequate, and also to enter into contracts for the future delivery of such films in advance of either production or delivery." [33]

That the bill will interfere with this freedom of contract is manifest. But some interference is necessary in order to bring about the desired protection of the public interest. Even if it be assumed that the interference will be substantial, it by no means follows that it is unconstitutional, for such interference merely raises the question of constitutionality and does not furnish the answer.

There is no such unrestricted liberty of contract as that for which Mr. Pettijohn contends. Nor do the cases cited by him and Mr. Kelley hold that there is. *United States* v. *Colgate Co.* (250 U. S. 300, 1919) and *Federal Trade Commission* v. *Raymond Bros.-Clark Co.* (263 U. S. 565, 1924), cited by Mr. Pettijohn, and *Chicago Board of Trade* v. *Christie* (198 U. S. 236, 1905) and *United States* v. *New York Coffee and Sugar Exchange* (263 U. S. 611, 1924), cited by Mr. Kelley,[34] merely held that certain trade practices did not come under the ban of any existing statutes. In none of these cases is there any discussion of constitutional questions, or any suggestion that Congress lacks power to restrict the normal freedom of contract when necessary in the public interest. Whatever freedom

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[25] *Binderup* v. *Pathé Exchange* (263 U. S. 291 (1923)). Mr. Pettijohn, at p. 1 of his brief submitted on behalf of the Motion Picture Producers and Distributors of America, Inc., states: "* * * Admittedly the distributors of motion-picture films whom I represent, are engaged in interstate commerce. This has been repeatedly decided by the courts and there is and can be no question of this point."

[26] Held invalid in *Schechter Poultry Co.* v. *United States* (295 U. S. 495 (1935)) because, inter alia, Congress exceeded its delegated powers.

[27] Held invalid in *Hammer* v. *Vagenhart* (247 U. S. 251 (1918)) because it invaded the reserved powers of the State.

[28] This memorandum attacks the Culkin bills (H. R. 2999 and 4757) and the Celler bill (H. R. 8877) along with the Neely-Pettengill bill, the constitutional problems involved being the same.

[29] Hearings, Subcommittee on Motion-Picture Films of the House Committee on Interstate and Foreign Commerce, pp. 86–88.

[30] *Ibid.*, pp. 83–84.

[31] *Ibid.*, 88–94.

[32] Mr. Kelley finds sec. 3 (1) and 3 (2) valid, although he expresses some doubt as to the latter [3 (2)].

[33] P. 2 of Mr. Pettijohn's brief.

[34] These cases are the sole basis of Mr. Kelley's conclusion that the synopsis requirement of sec. 4 violates due process.

of contract was recognized in those cases was not such as would prevent Congress from changing the law.[35]

Federal Trade Commission v. *Paramount Famous Lasky Corporation* (57 F. (2d) 152, C. C. A. 2, 1932) furnishes no more support for the industry's position than the cases mentioned above. It decided only that block booking and blind selling were not illegal under any existing statute; and did not even intimate that these practices were clothed with any special constitutional immunity. The power of Congress to regulate them was in no way involved.

The second contention made on behalf of the industry is that it "is not a public utility but a purely private enterprise engaged in furnishing the public a service of amusement and entertainment and is not affected with such a public interest as to justify Federal regulation and control." [36]

One answer to this contention is that the pending bill does not attempt to declare the industry a public utility or "affected with a public interest," nor does it impose any regulations of the kind usually associated with such declarations. That is to say, this bill does not undertake the direct regulation of prices. Whatever indirect effect it may have on prices—in regard to the relationship to be maintained between the price of films leased separately and the price of films leased in blocks (sec. 3)—will be because of the provisions of the type usually associated with antitrust laws and incidental to such regulations.

But a second and more compelling answer is that the Supreme Court has abandoned the idea that the validity of statutes can be tested by considering whether the business regulated is "affected with a public interest." This was the significant feature of *Nebbia* v. *New York* (291 U. S. 502), decided in 1934, sustaining a New York statute for the control of milk prices. "The phrase 'affected with a public interest' can mean no more," said the Court, "than that an industry for adequate reason is subject to control for the public good." And continuing: "It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the fifth and fourteenth amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory" (p. 563).

"If, as must be conceded, the industry is subject to regulation in the public interest, what constitutional principle bars the State from correcting existing maladjustment by legislation touching prices? We think there is no such principle" (pp. 531–532).

In the light of that case, it is of no avail to contend that the industry is not "affected with a public interest." *Tyson* v. *Banton* (273 U. S. 418; 1927), decided 7 years before the *Nebbia case* and so much relied on now by the industry, held invalid a price-fixing statute aimed at theater-ticket agencies in New York City. Even if that case be taken to be still law on its own facts, its basic doctrine is wholly at variance from the *Nebbia case*. And, in any event, it is manifest that the interest of the United States in an industry which touches and affects the life of the people of the whole Nation is different from and vastly deeper than any possible interest on the part of the State in the practices of ticket agencies in the city of New York.

III. THE CONSTITUTIONAL BASIS OF THE PROPOSED LAW

No one would contend that the National Government, within its delegated area, possesses less power than does a State within its own territory (*Gibbons* v. *Ogden*, 9 Wheat. 1, 1824). It is elementary that the power of a State "extends to all the great public needs" and "may be put forth in aid of what is * * * held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary for the public welfare" (*Noble State Bank* v. *Haskell*. 219 U. S. 104, 1911). The commerce power, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution" (*Gibbons* v. *Ogden*, *supra*, at p. 196). The powers of the Nation and of the States are limited by the due-process clauses of the fifth and fourteenth amendments, respectively. It is

[35] No useful purpose would be served by discussing other cases cited on this point by Mr. Pettijohn, for they deal with the same question: Whether given conduct was unlawful under one or another of the antitrust laws. The books abound with statutes that have been held constitutional, even though they prohibited pactices in which men were previously free to engage. Thus, a "tying-clause" agreement lawful under the Sherman, became unlawful under the Clayton Act. Compare *United States* v. *United Shoe Machinery Co.* (247 U. S. 32, 1918) with *United Shoe Machinery Corp.* v. *United States* (258 U. S. 451, 1922).

[36] P. 10 of Mr. Pettijohn's brief.

conspicuously true of due-process cases that constitutionality is conditioned upon underlying facts and that there is a presumption of constitutionality which "must prevail in the absence of some factual foundation of record for overthrowing the statute" (*O'Gorman and Young* v. *Hartford Fire Insurance Co.*, 282 U. S. 251, at 257, 1931).

The question whether the proposed legislation meets the requirement of due process of law is primarily (but, of course, not exclusively) a legislative one.[37] The essence of that requirement is "that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained" (*Nebbia* v. *New York, supra; R. R. Retirement Board* v. *Alton R. R. Co.*, 295 U. S. 330, 1935). Upon Congress rests the responsibility of determining whether the ends sought are desirable in the public interest and whether the means employed tend to achieve those ends. It has a large degree of discretion in weighing conflicting interests and in determining which shall prevail. Whatever "deprivation" of property may come from the proposed law must be considered in the light of the reasons which call it forth. Substantial "deprivations" have been sustained; for example, *Walls* v. *Midland Carbon Co.* (254 U. S. 300, 1920) (prohibition of consumption of natural gas without utilization of heat); *Euclid* v. *Ambler Realty Co.* (272 U. S. 365, 1926) (zoning laws); *Miller* v. *Schoene* (276 U. S. 272, 1928) (apple-growing industry preferred over growers of cedar trees).

A major objective of this bill is to forestall monopoly. Compulsory block-booking and blind selling, as complementary practices in the marketing of motion-picture films, are both declared in section 1 to tend toward the stifling of competition. Sections 3 and 4, in turn, are complementary provisions aimed at those practices. That is to say, the former section is designed to enable the exhibitor to choose freely between films and the latter to supply him with information on which to make an informed choice.

The power of Congress to foster competition and prevent monopoly in interstate commerce is well established. Compare the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. Moreover, exclusive dealing arrangements have been specifically recognized to have monopolistic tendencies (*Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 1922) regardless of whether they take the form of express contracts or whether they must be inferred from the nature of the business (*United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 1922; *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 503, 1917).

The prohibition (in subdivision 2 of sec. 3) of interstate shipment of any film leased in violation of the provision against compulsory block-booking is designed as an additional means of compelling observance of the main regulation. That Congress has a wide discretion with respect to the means by which its powers are to be carried into execution has been settled law since *McCulloch* v. *Maryland* (4 Wheat. 316, 1819).[38] Prohibitions of shipment in interstate commerce are numerous—for example, *Hippolite Egg Co.* v. *United States* (220 U. S. 54, 1911 (foods and drugs); *Brooks* v. *United States*, 267 U. S. 432, 1923 (stolen automobiles); and *Champion* v. *Ames*, 188 U. S. 321, 1903 (lottery tickets)).

The synopsis requirement of section 4, in addition to being sustainable as part of the plan to prevent monopoly, has further grounds for support. Moral considerations are involved. The synopsis requirement is intended to sharpen the producer's attention to the moral tone of his films and to put the exhibitor and the community he serves in a position to avoid undesirable pictures. Of the power of Congress to regulate interstate commerce for the protection of the public morals there can be no doubt (*Champion* v. *Ames, supra; Hoke* v. *United States*, 227 U. S. 308, 1913). Indeed, it is within the discretion of Congress to exert a closer and more exacting control over the movements of films in interstate commerce than is asserted in the pending bill. Control can be carried to the point of prohibition (*Weber* v. *Freed*, 239 U. S. 325, 1915) (sustaining the prohibition of interstate movement of prize-fight films).[39] But it is to be ob-

[37] The findings of Congress will be accorded great weight in the courts (*Board of Trade* v. *Olsen*, 262 U. S. 1, 1923).

[38] Following the pattern of the antitrust acts, the bill employs double means of enforcement, namely, proceedings in equity to enjoin violations and criminal proceedings to punish violations. No objection has been made, and there appears to be no basis for any, that the bill lacks sufficient definiteness for purposes of criminal proceedings. Compare *Nash* v. *United States* (229 U. S. 373, 1911); *Waters-Pierce Oil Co.* v. *Texas* (212 U. S. 86, 1909); *Omaechevaria* v. *Idaho* (246 U. S. 343, 1918).

[39] Sec. 396 of title 18, U. S. C. A., prohibits the interstate shipment of "any obscene, lewd, or lascivious, or any filthy * * * motion-picture films." It was sustained in *Clark* v. *United States* (211 F. 916, N. D. 1915).

served that the part of the pending bill now under discussion—i. e., section 4—prohibits nothing whatsoever in respect of the transportation of films. It is not censorship. It requires only that the contents of a film be disclosed in advance of its leasing. If the synopsis is furnished (and no other law, either Federal or State, is violated) the industry is free to produce, transport, and lease any kind of film for which it can find a market.

Disclosure of information is a well recognized and increasingly employed device for securing the protection of the public interest. Compare the Securities Act (15 U. S. C., sec. 77a); the Securities Exchange Act (15 U. S. C., sec. 78a); and the Pure Food and Drug Act (21 U. S. C.). Just as the Pure Food and Drug Act, in an effort to protect individual health, requires disclosure of the presence of morphine, opium, cocaine, and certain other potentially harmful ingredients in foods and drugs, so the present bill, in an effort to protect community morals, requires "a statement describing the manner of treatment of dialogs concerning and scenes depicting vice, crime, or suggestive of sexual passion." Whether the disclosure is required in advance and how far in advance must depend on when the public needs the disclosed information. In the case of foods and drugs labeling may be sufficient, but in the case of films something quite different may be required to give an equivalent opportunity for protection. The synopsis requirement of the present bill seeks to remedy a situation in which a community remains ignorant of the nature of its entertainment until revealed on the screen; it seeks to lay the foundation for making articulate the moral judgment of the community before the harm has been done.

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